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41 UNITED STATES DISTRICT COURT
42
43 NORTHERN DISTRICT OF CALIFORNIA
44
45 OAKLAND DIVISION

46
47 DONALD R. CAMERON, *et al.*
48 Plaintiffs
49
50 v.
51
52 APPLE INC., Defendant.

53 Case No. 4:19-cv-03074-YGR

54 **DECLARATION OF RACHEL S. BRASS IN
55 SUPPORT OF DEFENDANT APPLE INC.'S
56 OPPOSITION TO DEVELOPER
57 PLAINTIFFS' MOTION FOR CLASS
58 CERTIFICATION AND DEFENDANT
59 APPLE INC.'S MOTION TO EXCLUDE
60 TESTIMONY OF PROFESSOR EINER
61 ELHAUGE, PROFESSOR NICHOLAS
62 ECONOMIDES, AND CHRISTIAN
63 TREGILLIS**

64 The Honorable Yvonne Gonzalez Rogers

65 Date: Nov. 16, 2021
66 Time: 10:00 a.m.
67 Courtroom: 1, 4th Floor

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1 I hereby declare as follows:
2

3 1. I am an attorney licensed to practice in the State of California, and a member of the Bar
4 of this Court. I am a partner at the law firm Gibson, Dunn & Crutcher LLP, counsel of record for
5 Defendant Apple Inc. (“Apple”) in this case. I submit this declaration in support of Apple’s
6 Opposition to Developer Plaintiffs’ Motion for Class Certification and Apple’s Motion to Exclude
7 Testimony of Professor Einer Elhauge, Professor Nicholas Economides, and Christian Tregillis.

8 2. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts of the June 25, 2021
9 deposition of Donald Cameron noticed and taken in this matter.

10 3. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts of the transcript of
11 trial testimony of Timothy Cook given in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-
12 YGR-TSH on May 21, 2020.

13 4. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts of the February 12,
14 2021 deposition of Timothy Cook, noticed and taken in this matter.

15 5. Attached hereto as **Exhibit 4** is a true and correct copy of of the February 8, 2021
16 deposition of Eddy Cue, noticed and taken in this matter.

17 6. Attached hereto as **Exhibit 5** is a true and correct copy of the June 17, 2021
18 deposition of Richard Czeslawski, noticed and taken in this matter.

19 7. Attached hereto as **Exhibit 6** is a true and correct copy of the August 4, 2021 deposition
20 of Nicholas Economides, noticed and taken in this matter. Apple files herewith a Daubert Motion to
21 Exclude Testimony of Nicholas Economides, and submits his testimony in support of that Motion and,
22 to the extent his opinions are found admissible, for purposes of impeachment. By submitting the
23 transcript of his deposition testimony herewith, however, Apple does not concede that Economides’s
24 deposition testimony or the opinions in his expert report constitute admissible evidence.

25 8. Attached hereto as **Exhibit 7** is a true and correct copy of the July 30, 2021 deposition
26 of Einer Elhauge, noticed and taken in this matter. Apple files herewith a Daubert Motion to Exclude
27 Testimony of Einer Elhauge, and submits his testimony in support of that Motion and, to the extent his
28 opinions are found admissible, for purposes of impeachment. By submitting the transcript of his

1 deposition testimony herewith, however, Apple does not concede that Elhauge's deposition testimony
2 or the opinions in his expert report constitute admissible evidence.

3 9. Attached hereto as **Exhibit 8** is a true and correct copy of excerpts of the transcript of
4 trial testimony of Matthew Fischer given in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-
5 YGR-TSH on May 6, 2021.

6 10. Attached hereto as **Exhibit 9** is a true and correct copy of excerpts of the May 22, 2020
7 deposition of Edward Hayter, noticed and taken in this matter.

8 11. Attached hereto as **Exhibit 10** is a true and correct copy of excerpts of the July 23, 2020
9 deposition of Edward Lawrence, noticed and taken in this matter.

10 12. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts of the February 24,
11 2021 deposition of Adrian Ong, noticed and dated in this matter.

12 13. Attached hereto as **Exhibit 12** is a true and correct copy of excerpts of the transcript of
13 trial testimony of Philip Schiller given in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-
14 YGR-TSH on May 17-19, 2020.

15 14. Attached hereto as **Exhibit 13** is a true and correct copy of excerpts of the two-day,
16 February 11 and 15, 2021 deposition of Philip Schiller, noticed and taken in this matter.

17 15. Attached hereto as **Exhibit 14** is a true and correct copy of excerpts of the February 15,
18 2021 deposition of Michael Schmid, noticed and taken in this matter.

19 16. Attached hereto as **Exhibit 15** is a true and correct copy of excerpts of the June 16, 2021
20 deposition of Stephen Schwartz, noticed and taken in this matter.

21 17. Attached hereto as **Exhibit 16** is a true and correct copy of excerpts of the April 23,
22 2021 deposition of Benjamin Simon, noticed and taken in this matter.

23 18. Attached hereto as **Exhibit 17** is a true and correct copy of excerpts of the transcript of
24 trial testimony of Timothy Sweeney given in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-
25 YGR-TSH on May 3-4, 2021.

26 19. Attached hereto as **Exhibit 18** is a true and correct copy of excerpts of the February 8,
27 2021 deposition of Timothy Sweeney, noticed and taken in this matter.

1 20. Attached hereto as **Exhibit 19** is a true and correct copy of excerpts of the August 2,
 2 2021 deposition of Christian Tregillis, noticed and taken in this matter.
 3

4 21. Attached hereto as **Exhibit 20** is a true and correct copy of a document titled “Amazon
 5 Developer Services Agreement” produced in this litigation with a Bates label of AMZN000000755.
 6

7 22. Attached hereto as **Exhibit 21** is a true and correct copy of the study “How Large Is the
 8 Apple App Store Ecosystem? A Global Perspective for 2019” published by Analysis Group on June
 9 15, 2020, available at <https://www.apple.com/newsroom/pdfs/app-store-study-2019.pdf> (and marked
 10 in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as DX-3181).
 11

12 23. Attached hereto as **Exhibit 22** is a true and correct copy of Schedule 2 to the Apple
 13 Developer Program License Agreement produced in this litigation with a Bates label of APL-
 14 APPSTORE_10137343 (and marked in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-
 15 YGR-TSH as DX-3256).
 16

17 24. Attached hereto as **Exhibit 23** is a true and correct copy of the Apple Developer
 18 Program License Agreement produced in this litigation with a Bates label of APL-
 19 APPSTORE_10335359 (and marked in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-
 20 YGR-TSH as DX-3352).
 21

22 25. Attached hereto as **Exhibit 24** is a true and correct copy of a document titled “Apple
 23 Video Partner Program” produced in this litigation with a Bates label of APL-EG_07868683 (and
 24 marked in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as DX-3421).
 25

26 26. Attached hereto as **Exhibit 25** is a true and correct copy of a document titled “Epic
 27 Games Store Presentation to the Board of Directors” produced in this litigation with a Bates label of
 28 EPIC_00127298 (and marked in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH
 as DX-3955).
 29

30 27. Attached hereto as **Exhibit 26** is a true and correct copy of a transcript of the June 9,
 31 2008 Keynote produced in this litigation with a Bates label of APL-APPSTORE_00029588 (and
 32 marked in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as DX-4135).
 33

1 28. Attached hereto as **Exhibit 27** is a true and correct copy of a document titled “App Store
 2 Business Program” produced in this litigation with a Bates label of APL-EG_10248340 (and marked
 3 in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as DX-4168).

4 29. Attached hereto as **Exhibit 28** is a true and correct copy of the App Store Review
 5 Guidelines produced in this litigation with a Bates label of APL-APPSTORE_09806130 (and marked
 6 in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as DX-4338).

7 30. Attached hereto as **Exhibit 29** is a true and correct copy of a presentation at Google
 8 produced in this litigation with a Bates label of GOOG-APPL-00100290 (and marked in the trial of
 9 *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as DX-5324).

10 31. Attached hereto as **Exhibit 30** is a true and correct copy of the article “New Revenue
 11 Share Tiers and other updates to the Steam Distribution Agreement,” published by Steam on November
 12 30, 2018 and available at <https://steamcommunity.com/groups/steamworks/announcements/detail/1697191267930157838> (last accessed on Aug. 10, 2021).

14 32. Attached hereto as **Exhibit 31** is a true and correct copy of an email exchange between
 15 Donald Cameron, Liu Xinjun, Mark Edelsberg, and Pritesh Shah dated July 28-29, 2015 produced in
 16 this litigation with a Bates label of LBN_0000277.

17 33. Attached hereto as **Exhibit 32** is a true and correct copy of the App Analytics page for
 18 Lil’ BabyNames produced in this litigation with a Bates label of LBN_0002544.

19 34. Attached hereto as **Exhibit 33** is a true and correct copy of a transcript of the March 6,
 20 2008 iPhone SDK Launch produced in this litigation with a Bates label of APL-APPSTORE_00000055
 21 (and marked in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as PX-0880).

22 35. Attached hereto as **Exhibit 34** is a true and correct copy of the Apple Developer
 23 Agreement (and marked in the trial of *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH as
 24 PX-2618).

25 36. Attached hereto as **Exhibit 35** is a true and correct copy of a document titled “Terms
 26 and Conditions” produced in this litigation with a Bates label of SEA_00041531.

37. Attached hereto as **Exhibit 36** is a true and correct copy of an internal Steam business document produced in this litigation with a Bates label of VALVE000639.

38. Attached hereto as **Exhibit 37** is a true and correct copy of an internal Steam business document produced in this litigation with a Bates label of VALVE000675.

39. Attached hereto as **Exhibit 38** is a true and correct copy of the Preliminary Injunction Order issued on October 9, 2020 in *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR-TSH (and found on that matter's docket at Docket No. 118).

40. Attached hereto as **Exhibit 39** is a true and correct copy of excerpts of the June 14, 2021 deposition of Robert Pepper, noticed and taken in this matter.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed on August 10, 2021 at San Francisco, California.

/s/ *Rachel S. Brass*

Rachel S. Brass